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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,
Plaintiff,
v.
D. R. Patel Investments, LLC, a
California Limited Liability
Company;
Twinkle Travel, a California
Corporation; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of D. R. Patel Investments, LLC, a California Limited Liability Company; Twinkle Travel, a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially

1 equipped van.

2 2. Defendant D. R. Patel Investments, LLC owned the real property
3 located at or about 2230 Lombard Street, San Francisco, California, in
4 September 2018.

5 3. Defendant D. R. Patel Investments, LLC owned the real property
6 located at or about 2230 Lombard Street, San Francisco, California, in
7 October 2018.

8 4. Defendant D. R. Patel Investments, LLC owned the real property
9 located at or about 2230 Lombard Street, San Francisco, California, in
10 December 2018.

11 5. Defendant D. R. Patel Investments, LLC owns the real property located
12 at or about 2230 Lombard Street, San Francisco, California, currently.

13 6. Defendant Twinkle Travel owned Travel Inn located at or about 2230
14 Lombard Street, San Francisco, California, in September 2018.

15 7. Defendant Twinkle Travel owned Travel Inn located at or about 2230
16 Lombard Street, San Francisco, California, in October 2018.

17 8. Defendant Twinkle Travel owned Travel Inn located at or about 2230
18 Lombard Street, San Francisco, California, in December 2018.

19 9. Defendant Twinkle Travel owns Travel Inn ("Motel") located at or
20 about 2230 Lombard Street, San Francisco, California, currently.

21 10. Plaintiff does not know the true names of Defendants, their business
22 capacities, their ownership connection to the property and business, or their
23 relative responsibilities in causing the access violations herein complained of,
24 and alleges a joint venture and common enterprise by all such Defendants.
25 Plaintiff is informed and believes that each of the Defendants herein,
26 including Does 1 through 10, inclusive, is responsible in some capacity for the
27 events herein alleged, or is a necessary party for obtaining appropriate relief.
28 Plaintiff will seek leave to amend when the true names, capacities,

1 connections, and responsibilities of the Defendants and Does 1 through 10,
2 inclusive, are ascertained.

3

4 **JURISDICTION & VENUE:**

5 11. The Court has subject matter jurisdiction over the action pursuant to 28
6 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
7 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

8 12. Pursuant to supplemental jurisdiction, an attendant and related cause
9 of action, arising from the same nucleus of operative facts and arising out of
10 the same transactions, is also brought under California's Unruh Civil Rights
11 Act, which act expressly incorporates the Americans with Disabilities Act.

12 13. Venue is proper in this court pursuant to 28 U.S.C. § 1333(b) and is
13 founded on the fact that the real property which is the subject of this action is
14 located in this district and that Plaintiff's cause of action arose in this district.

15

16 **FACTUAL ALLEGATIONS:**

17 14. Plaintiff went to the Motel in September 2018, October 2018 and
18 December 2018 with the intention to avail himself of its goods or services,
19 motivated in part to determine if the defendants comply with the disability
20 access laws.

21 15. The Motel is a facility open to the public, a place of public
22 accommodation, and a business establishment.

23 16. Parking spaces are another one of the facilities, privileges, and
24 advantages offered by Defendants to patrons of the Motel.

25 17. Unfortunately, during plaintiff's visits to the subject property in
26 September 2018, October 2018 and December 2018, plaintiff noticed that a
27 variety of cars parked in the designated van parking space marked and
28 reserved for persons with disabilities. The cars did not have disability placards,

1 license plates or tags. These cars parked in the parking stalls and access aisles
2 that should have been reserved for persons with disabilities.

3 18. On two occasions, plaintiff observed the same black vehicle with the
4 same license plate number parked in the parking stall reserved for persons with
5 disabilities. Plaintiff alleges, on information and belief, that this vehicle
6 belongs to an employee of the Motel.

7 19. In January 2019, when an investigator went to the property to capture
8 images and get various measurements, the investigator saw that the same
9 black car observed during two of the plaintiff's previous visits was parked in
10 the designated van parking stall designed for persons with disabilities. The car
11 did not have disability placards, disability license plates or tags.

12 20. The defendants have no policy of prohibiting ambulatory persons, who
13 have no right to use the parking stalls designed for persons with disabilities,
14 from using the parking stalls.

15 21. Finally, next to the parking stall with the logo, there were white diagonal
16 lines that did not have a "NO PARKING" warning in it. The defendants do not
17 maintain the parking spaces reserved for persons with disabilities.

18 22. Guest rooms are another one of the facilities, privileges, and advantages
19 offered by Defendants to patrons of the Motel.

20 23. The Motel's website did not allow customers to book accessible guest
21 rooms with two beds online.

22 24. Currently, the Motel's website does not allow customers to book
23 accessible guest rooms with two beds online.

24 25. Defendants have failed to maintain in operable working condition those
25 features of facilities and equipment that are required to be readily accessible to
26 and usable by persons with disabilities at the Subject Property.

27 26. Plaintiff personally encountered these barriers.

28 27. This inaccessible facility denied the plaintiff full and equal access and

1 caused him difficulty.

2 28. Transaction counters are also one of the facilities, privileges, and
3 advantages offered by Defendants to patrons of the Motel.

4 29. Meanwhile, even though the plaintiff did not personally confront the
5 barriers, the transaction counter at the Motel is more than 36 inches in height.
6 In fact, the transaction counter is about 48 inches high.

7 30. There is no lowered, 36 inch portion of the transaction counter at the
8 Motel for use by persons in wheelchairs to conduct transactions.

9 31. The defendants have failed to maintain in working and useable
10 conditions those features required to provide ready access to persons with
11 disabilities.

12 32. The barriers identified above are easily removed without much
13 difficulty or expense. They are the types of barriers identified by the
14 Department of Justice as presumably readily achievable to remove and, in fact,
15 these barriers are readily achievable to remove. Moreover, there are numerous
16 alternative accommodations that could be made to provide a greater level of
17 access if complete removal were not achievable.

18 33. A common barrier removal project is modifying transaction counters to
19 make a portion of the counter accessible. This is a simple construction task,
20 well within the capabilities of any general contractor. The task can be
21 completed easily and for a modest price.

22 34. Plaintiff will return to the Motel to avail himself of its goods or services
23 and to determine compliance with the disability access laws. He is currently
24 deterred from doing so because of his knowledge of the existing barriers. If the
25 barriers are not removed, the plaintiff will face unlawful and discriminatory
26 barriers again.

27 35. Given the obvious and blatant nature of the barriers and violations
28 alleged herein, the plaintiff alleges, on information and belief, that there are

1 other violations and barriers on the site that relate to his disability. Plaintiff will
 2 amend the complaint, to provide proper notice regarding the scope of this
 3 lawsuit, once he conducts a site inspection. However, please be on notice that
 4 the plaintiff seeks to have all barriers related to his disability remedied. See
 5 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 6 encounters one barrier at a site, he can sue to have all barriers that relate to his
 7 disability removed regardless of whether he personally encountered them).

8

9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 10 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 13 again herein, the allegations contained in all prior paragraphs of this
 14 complaint.

15 37. Under the ADA, it is an act of discrimination to fail to ensure that the
 16 privileges, advantages, accommodations, facilities, goods and services of any
 17 place of public accommodation is offered on a full and equal basis by anyone
 18 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 19 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,
 21 or procedures, when such modifications are necessary to afford
 22 goods, services, facilities, privileges, advantages, or
 23 accommodations to individuals with disabilities, unless the
 24 accommodation would work a fundamental alteration of those
 25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 26 b. A failure to remove architectural barriers where such removal is
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 28 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,

1 Appendix "D."

2 c. A failure to make alterations in such a manner that, to the
3 maximum extent feasible, the altered portions of the facility are
4 readily accessible to and usable by individuals with disabilities,
5 including individuals who use wheelchairs or to ensure that, to the
6 maximum extent feasible, the path of travel to the altered area and
7 the bathrooms, telephones, and drinking fountains serving the
8 altered area, are readily accessible to and usable by individuals
9 with disabilities. 42 U.S.C. § 12183(a)(2).

10 38. Any business that provides parking spaces must provide accessible
11 parking spaces. 2010 Standards § 208. Under the 2010 Standards, one in
12 every six accessible parking spaces must be van accessible. 2010 Standards §
13 208.2.4.

14 39. Here, the defendants allowed cars without disability placards, disability
15 license plates or tags to park in the in the designated parking stalls ostensibly
16 designed for persons with disabilities. This is a violation. Additionally, the lack
17 of maintenance has allowed the parking spaces to fade. This is a violation.

18 40. Under the ADA, public accommodations that own or operate a place of
19 lodging have an obligation to "ensure that individuals with disabilities can
20 make reservations for accessible guest rooms during the same hours and in the
21 same manner as individuals who do not need accessible rooms." 28 C.F.R. §
22 36.302(e)(1)(i).

23 41. Here, the Motel's failure to provide disabled individuals the ability to
24 book similar accessible guestrooms online through their website, like non-
25 disabled individuals, is a violation ADA. Plaintiff was unable to book an
26 accessible guestroom with two beds online, for example.

27 42. Under the 2010 Standards, where the approach to the sales or service
28 counter is a parallel approach, such as in this case, there must be a portion of

1 the sales counter that is no higher than 36 inches above the floor and 36 inches
2 in width and must extend the same depth as the rest of the sales or service
3 counter top. 2010 Standards § 904.4 & 904.4.1.

4 43. Here, no such accessible counter has been provided in violation of the
5 ADA.

6 44. The Safe Harbor provisions of the 2010 Standards are not applicable
7 here because the conditions challenged in this lawsuit do not comply with the
8 1991 Standards.

9 45. A public accommodation must maintain in operable working condition
10 those features of its facilities and equipment that are required to be readily
11 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

12 46. Here, the failure to ensure that the accessible facilities were available
13 and ready to be used by the plaintiff is a violation of the law.

14

**15 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
16 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
17 Code § 51-53.)**

18 47. Plaintiff repleads and incorporates by reference, as if fully set forth
19 again herein, the allegations contained in all prior paragraphs of this
20 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
21 that persons with disabilities are entitled to full and equal accommodations,
22 advantages, facilities, privileges, or services in all business establishment of
23 every kind whatsoever within the jurisdiction of the State of California. Cal.
24 Civ. Code § 51(b).

25 48. The Unruh Act provides that a violation of the ADA is a violation of the
26 Unruh Act. Cal. Civ. Code, § 51(f).

27 49. Defendants’ acts and omissions, as herein alleged, have violated the
28 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s

1 rights to full and equal use of the accommodations, advantages, facilities,
2 privileges, or services offered.

3 50. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
4 discomfort or embarrassment for the plaintiff, the defendants are also each
5 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
6 (c).)

7 51. Although the plaintiff was markedly frustrated by facing discriminatory
8 barriers, even manifesting itself with minor and fleeting physical symptoms,
9 the plaintiff does not value this very modest physical personal injury greater
10 than the amount of the statutory damages.

11

12 **PRAYER:**

13 Wherefore, Plaintiff prays that this Court award damages and provide
14 relief as follows:

15 1. For injunctive relief, compelling Defendants to comply with the
16 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
17 plaintiff is not invoking section 55 of the California Civil Code and is not
18 seeking injunctive relief under the Disabled Persons Act at all.

19 2. Damages under the Unruh Civil Rights Act, which provides for actual
20 damages and a statutory minimum of \$4,000 for each offense.

21 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
22 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

23

24 Dated: January 14, 2019

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26 By: _____
27

28 Chris Carson, Esq.
Attorney for plaintiff